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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 18.

HUEY P. LONG, *Petitioner,*

v.

SAMUEL T. ANSELL.

BRIEF ON BEHALF OF RESPONDENT.

SAMUEL T. ANSELL.

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Of Counsel.
835 Transportation Building,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF ON BEHALF OF RESPONDENT.

1.

There is but one question before this honorable Court: *Is a Senator of the United States, while serving in his official capacity, exempt from service of civil process in the District of Columbia?* The Supreme Court of the District, upon motion to quash, ruled No; and upon special appeal, the Court of Appeals also ruled No, affirmed the order denying the motion, and wrote a cogently-reasoned opinion (69 F. (2d), 386). Petitioner's fault-finding with the opinion of the Court of Appeals, claiming it passed beyond the question before it and to the merits of the litigation, presents no question here. The expressions complained of, patently true as shown by the record, were statements of reasoning and elucidation and not of decision. Judicial

opinions are neither imperial rescripts nor mere ritualism. The Court of Appeals decided the one question before it; and that question is the only question before this Court.

2.

We rest our case upon the strength of the opinion of the Court of Appeals (R. 23), adding here only a few brief comments:

(1) Petitioner professes to see the question in three aspects: (a) the Common Law; (b) the "modern extension" of the judicial privilege of exempting from service of process "suitors, witnesses, and public servants" from a foreign jurisdiction; (c) the Constitution.

We see it in but one—the Constitution. Article I, Section 6, provides—

> "* * * They [Senators and Representatives] shall in all cases, except treason, felony and breach of the peace, be privileged from *arrest* during their attendance at the session of their respective Houses, and in going to and returning from the same * * *"—

in which "arrest" means actual detention of the person.

(2) An examination of the cases cited by petitioner requires us to say that they are not of a character to merit serious consideration or extended discussion.

(3) The law, as we think it has ever been applied in this jurisdiction from the earliest times, was long ago authoritatively declared in Merrick & Durant v. Giddings, 1 McArthur and Mackey's Reports, 55 (1879) and Howard v. Trust Company, 12 App. D. C. 222 (1898), in able and exhaustive opinions; and now again by the Court of Appeals in the instant case. These decisions are in entire accord with Williamson v. The United States, 207 U. S. 425, in which this Court manifestly saw no "supreme necessity to the Government" for liberalizing the immunity beyond strict constitutional requirement.

3.

Petitioner's plea made to the courts below and now to the highest of American tribunals seems, to us at least, strikingly, almost disturbingly, strange and foreign; a plea for senatorial prerogative that places the personal wrongs done by a Senator to a private citizen beyond the effective reach of the law. He contends for a judicial enunciation of a public policy rule under which the District of Columbia would become a retreat in which Senators, Representatives, and everybody else engaged here in public service, would be free from answering for their breaches of contract obligations and their tortious acts done to the person or property of a citizen. He urges that this Court should require the courts here to adopt what he regards as more modern public policy, and, without constitutional or statutory provision, extend the fullest immunity from civil suit not only to suitors and witnesses but to "any person who comes, or is brought, into a foreign jurisdiction of which he is not a resident, on a judicial or public errand" and, *a fortiori*, to a Senator of the United States. The "supreme necessity to the Government", it is said, to which private rights must yield, requires that a Senator must not be "subject to the menace of being harassed by private litigation in the District of Columbia". If a Senator, or any of the thousands engaged here in the service of the public, injure or destroy the person, property, or reputation of a citizen, or flout his obligations to merchant, tailor, butcher, baker, this honorable Court is asked to say that the injured citizen shall have no redress in the courts here where the wrong is done, and must be content to follow the wrongdoing Senator into his own bailiwick—poor right indeed.

4.

Experience, we think, would suggest no judicial extension beyond the privileges and immunities fairly established by the specific provision of the Constitution. We

are insensible to the argument that this Court should deduce out of the Constitution or its concept of public policy the remarkable immunity contended for.

Respectfully submitted,

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OPINION

SUPREME COURT OF THE UNITED STATES.

No. 18.—October Term, 1934.

Huey P. Long, Petitioner,
vs.
Samuel T. Ansell.

On Certiorari to the Court of Appeals of the District of Columbia.

[November 5, 1934.]

Mr. Justice Brandeis delivered the opinion of the Court.

On March 27, 1933, Samuel T. Ansell, a resident of the District of Columbia, brought, in the Supreme Court of the District, an action for libel against Huey P. Long of Louisiana. The summons was served on the defendant within the District. It directed him to answer and show cause why the plaintiff should not have judgment for the cause of action stated in his declaration. The defendant, appearing specially, and solely for the purpose, filed on April 25, 1933, a motion to quash the summons and the service thereof on the following ground:

"The summons was issued on Monday, March 27, 1933 and served on the defendant on Monday, April 3, 1933, whereas the first session of the Seventy-third Congress was convened on the ninth day of March, 1933 and has remained continuously in session since that date, and was in session on the dates of the issuance and service of said summons (of which fact defendant prays the court to take judicial notice) and the defendant as alleged is a United States Senator who was in attendance upon the meetings of the first session of the Seventy-third Congress of the United States and the summons and service thereof is invalid and of no legal effect whatever because in violation of Article I, Section 6, Clause 1, of the Constitution of the United States, which provides that Senators and Representatives of the United States 'shall in all cases except, treason, felony and breach of the peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same.'"

On May 9, 1933, the Supreme Court of the District denied the motion, but stayed further proceedings for twenty days pending application to the Court of Appeals of the District for a special

appeal. That court allowed the appeal. On February 5, 1934, it affirmed the order denying the motion to quash. 69 F. (2d) 386. This Court granted certiorari. 292 U. S. 619.

Senator Long contends that Article I, Section 6, Clause 1 of the Constitution, confers upon every member of Congress, while in attendance within the District, immunity in civil cases not only from arrest, but also from service of process. Neither the Senate, nor the House of Representatives, has ever asserted such a claim in behalf of its members. Clause 1 defines the extent of the immunity. Its language is exact and leaves no room for a construction which would extend the privilege beyond the terms of the grant. In *Kimberly* v. *Butler,* Fed. Cases No. 7, 777, Mr. Chief Justice Chase, sitting in the Circuit Court for the District of Maryland, held that the privilege was limited to exemption from arrest. Compare Mr. Justice Grier, sitting in the Circuit Court of the District of New Jersey in *Nones* v. *Edsall,* 1 Wall. Jr. 189, Fed. Cases No. 10, 290. The courts of the District of Columbia, where the question has been raised from time to time since 1868, have consistently denied the immunity asserted. *Merrick* v. *Giddings,* McArthur & Mackey 55, 67; *Howard* v. *Citizens' Bank & Trust Co.,* 12 App. D. C. 222.[1] State cases passing on similar provisions so hold.[2]

History confirms the conclusion that the immunity is limited to arrest. See opinion of Mr. Justice Wylie in *Merrick* v. *Giddings.* The cases cited in support of the contrary view rest largely upon doubtful notions as to the historic privileges of members of Parliament before the enactment in 1770 of the statute of 10 George III, c. 50.[3] That act declared that members of Parliament should

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[1]See also Worth *v.* Norton, 56 S. C. 56; Bartlett *v.* Blair, 68 N. H. 232.

[2]Phillips *v.* Browne, 270 Ill. 450; Berlet *v.* Weary, 67 Neb. 75; Rhodes *v.* Walsh, 55 Minn. 542; Gentry *v.* Griffith, Hyatt & Co., 27 Tex. 461; Catlett *v.* Morton, 4 Litt. (Ky.) 122; compare Doyle-Kidd Dry Goods Co. *v.* Munn, 151 Ark. 629; Huntington *v.* Shultz and M'Kenna, 1 Harp. L. Rep. (S. C.) 452; Hart and Foster *v.* Flynn's Executor, 8 Dana (Ky.) 190.

[3]See Bolton *v.* Martin, 1 Dall. 317; Gyer's Lesse *v.* Irwin, 4 Dall. 96; Doty *v.* Strong, 1 Pinney (Wis.) 84; Anderson *v.* Rountree, 1 Pinney 115; Miner *v.* Markham, 28 Fed. 387. The first of these cases relied upon a passage in Blackstone in which it is stated that no member of either house may be "served with any process of the courts of law . . . without a breach of the privilege of parliament". The passage appears as quoted in the fourth edition of Blackstone (1771), v. 1, p. 165. In the fifth edition (1773), however,

be subject to civil process, provided that they were not "arrested or imprisoned". When the Constitution was adopted, arrests in civil suits were still common in America.[4] It is only to such arrests that the provision applies. *Williamson* v. *United States,* 207 U. S. 425.

The constitutional privilege here asserted must not be confused with the common law rule that witnesses, suitors and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service in another. That rule of practice is founded upon the needs of the court, not upon the convenience or preference of the individuals concerned. And the immunity conferred by the court is extended or withheld as judicial necessities require. See *Lamb* v. *Schmitt,* 285 U. S. 222, 225, 226.

Affirmed.

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Test:

Clerk, Supreme Court, U. S.

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the phrase "served with any process of the courts of law" is deleted and other changes made in the same paragraph, so as to correspond with the statute of 10 George III, c. 50. In Miner *v.* Markham, the passage is quoted in its original form.

[4]Wyche, Practice of the Supreme Court of the State of New York (2d. ed., 1794), p. 50, *et seq.;* Robinson, Practice in Courts of Law and Equity in Virginia (1832), pp. 126-130; Howe, Practice in Civil Actions and Proceedings at Law in Massachusetts (1834), pp. 55-56, 141-148, 181-187; Troubat & Haly, Practice in Civil Actions and Proceedings in Supreme Court of Pennsylvania (1837), pp. 170-189. An early Virginia statute provided that in actions against the Governor and certain other officers of the Commonwealth, a summons should issue "instead of the ordinary process", the capias ad respondendum. Collection of the Acts of the General Assembly of Virginia, Published Pursuant to the Act of 1792 (1794), c. 66, § 23, p. 83; Rev. Code (1819), c. 128, § 68, p. 506.